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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 29 2006

IN RE:

Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran who on September 17, 1987, was admitted into the United States in possession of a valid F-1 student visa. The applicant departed the United States on an unknown date and on May 12, 1993, he entered the United States without a lawful admission or parole. On the same date, the applicant was apprehended by the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) and an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on him. On September 14, 1993, the applicant failed to appear for a deportation hearing and he was subsequently ordered deported in absentia by an immigration judge, pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act (the Act) for having entered the United States without inspection. On June 9, 1995, the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589) with CIS. On July 25, 1995, the applicant was interviewed for asylum status. His application was approved and the applicant was granted asylum status on July 26, 1995. On April 30, 2002, the Service filed a motion to reconsider the asylum grant because it was determined that the applicant was in deportation proceedings when he filed the Form I-589 and the Service did not have jurisdiction over his case. Consequently, on July 12, 2002, the applicant's asylum status was rescinded by the Director, San Francisco Asylum office. On November 5, 2002, the applicant was removed from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. He is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to travel to the United States and reside with his U.S. citizen spouse.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See Director's Decision* dated August 25, 2005.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) from Mr. [REDACTED]. The AAO notes that on June 4, 1998, Mr. [REDACTED] was disbarred from the practice of law, by the New York Supreme Court, Appellate Division, First Judicial Department. On December 2, 2005, the Board of Immigration Appeals (BIA) suspended Mr. [REDACTED] from practicing before the Executive Office of Immigration Review (EOIR), the BIA, the immigration courts and the Department of Homeland Security (DHS). On May 4, 2006, the BIA issued a final order of discipline, expelling Mr. [REDACTED] from practice before the BIA, the immigration courts, and the DHS. Therefore, the AAO will not be sending a copy of the decision to Mr. [REDACTED] but this office will accept the submitted information.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law . . . [and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of

a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.]

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has; (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others; (2) has added a bar to admissibility for aliens who are unlawfully present in the United States; (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, Mr. [REDACTED] states that the applicant did not knowingly and/or intentionally violate, disregard or disobey any immigration law, rule or regulation of the United States. In addition, Mr. [REDACTED] states that the applicant was represented by an attorney and followed any and all instructions received from that attorney. Mr. [REDACTED] states that he will submit documentation concerning the failure of the attorney to properly advise and represent the applicant. Additionally, Mr. [REDACTED] states that the applicant is married to a U.S. citizen who will suffer extreme hardship if the applicant is not permitted to enter the United States. In a letter submitted by the applicant, he states that he was misled by faulty legal advice from his family and his attorney, and he never evaded the immigration department or disregarded the law. The applicant states that after Border Patrol agents apprehended him, he was advised that he would receive a notice in the mail for a court hearing. In addition, the applicant states that he never was informed of his hearing date and whoever received the notice never informed him of the date. The applicant further states that his brother completed a Form I-589, which he then signed. He was told by his brother not to worry about his failure to appear for his deportation proceedings. Additionally, the applicant states that he was unaware that an alien registration number had been assigned to him at the time he was apprehended. Furthermore, the applicant states that he contacted the immigration office numerous times regarding his application for adjustment of status. Moreover, the applicant states that it is very difficult for him to live in Iran because he is unfamiliar with the way of life in Iran, and his parents and siblings are all either United States or Canadian citizens who reside in North America. Finally, the applicant states that it is unjust to be punished for other people's errors, and requests that the appeal be granted.

Mr. [REDACTED] failed to submit documentation to justify his assertion that the applicant was not properly advised or represented by his previous attorney. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In addition, the applicant's statement that he did not know that he was assigned an alien registration number when he was apprehended at the border is not persuasive. The applicant was served with an OSC that clearly indicated that he was assigned an alien registration number. In addition, it was the applicant's responsibility to review his Form I-589 and make sure that all information provided to the Service was true

and correct. Although the applicant states that he was never given the correspondence regarding his deportation hearing date, the record of proceeding reveals that documentation was forwarded to the applicant's last known address. The regulations at 8 C.F.R. § 103.5a(b) discuss service by mail and state that service by mail is complete upon mailing.

Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's spouse, but it will be just one of the determining factors.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that:

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The court held in *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Nunoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998) need not be accorded great weight by the district director in considering discretionary weight. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper.

The applicant, in the present matter, married his U.S. citizen spouse on May 22, 2002, over eight and one half years after he was ordered deported and approximately a month after the Service informed him of its intent to rescind his asylum status. The applicant's spouse should reasonably have been aware at the time of their marriage of the possibility of his being removed. He now seeks relief based on that after-acquired equity. Therefore, hardship to his spouse will not be accorded great weight.

The AAO finds that the favorable factors in this case are the applicant's family ties in the United States, his U.S. citizen spouse, an approved Form I-130, the prospect of general hardship to his spouse and the absence of any criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's illegal entry into the United States, his failure to appear for deportation proceedings, his application for asylum without revealing his prior immigration violation and the fact that he was served with an OSC, his employment without authorization and his lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. His equity, marriage to a U.S. citizen, gained after he was placed in deportation proceedings, can be given only minimal weight. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.